

§§ 83.6—83.9 [Reserved]

Subpart B—Discrimination in Admissions Prohibited

§ 83.10 General obligations.

(a) *Eligibility for support.* No entity will be provided Federal support unless such entity has furnished the Director assurances satisfactory to him or her that it will not discriminate on the basis of sex, in violation of this part, in the admission of individuals to each of its training programs.

(b) *Eliminating the effects of discrimination.* An assurance of compliance with this part will not be satisfactory to the Director if the entity submitting such assurance fails to take whatever remedial action in accordance with § 83.3(a) that is necessary for such entity to eliminate the effects of any discrimination on the basis of sex in the admission of individuals to its training programs that such entity practiced prior to the submission to the Director of such assurance, or practices at the time of or subsequent to such submission. The Director may require such entity, as a condition to determining that its assurance is, or remains, satisfactory, to take specific actions, or to submit to him or her specific information, bearing upon compliance with this part.

§ 83.11 Discriminatory acts prohibited.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other training program or activity operated by an entity.

(b) *Discrimination in selection.* In determining whether an individual satisfies any enrollment, eligibility, or other condition for selection for a training program, a federally supported entity shall not:

(1) On the basis of sex, given preference to one individual over another by ranking applicants on such basis, or otherwise give such preference; or

(2) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(3) Otherwise treat one individual differently from another on the basis of sex.

(c) *Testing.* A federally supported entity shall not administer or operate any test or use any criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown validly to predict success in the training program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(d) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, in providing financial aid or any other benefit, an entity to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat pregnancy, childbirth, termination of pregnancy and any temporary disabilities related to or resulting from pregnancy, childbirth, termination of pregnancy or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss," or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(e) *Preference to students from other institutions in admission.* An entity shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members

of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this part.

(f) *Discrimination in the provision of benefits and services*—(1) *General*. Except as otherwise provided in this part in providing financial aid or any other benefit, or in providing any service, to an applicant for a training program or to a student enrolled in such program, no federally supported entity shall on the basis of sex:

(i) Treat one individual differently from another in determining whether such individual satisfies any requirement or condition for the provision of such benefit or service;

(ii) Provide a different benefit or service or provide a benefit or a service in a different manner;

(iii) Deny an individual any such benefit or service;

(iv) Subject an individual to separate treatment or rules of behavior;

(v) Discriminate against any individual by assisting an agency, organization, or individual in providing, in a manner which discriminates on the basis of sex, a benefit or service to applicants for or students enrolled in a training program; or

(vi) Otherwise limit any individual in the enjoyment of any right, privilege, advantage, or opportunity.

(2) *Financial aid established by certain legal instruments*. (i) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein: *Provided*, That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(ii) To ensure nondiscriminatory awards of assistance as required in paragraph (f)(2)(i) of this section, recipients shall develop and use procedures under which:

(A) Students are selected for award of financial assistance on the basis of non-discriminatory criteria and not of

the basis of availability of funds restricted to members of a particular sex;

(B) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (f)(2)(ii)(A) of this section; and

(C) No student is denied the award for which he or she was selected under paragraph (f)(2)(ii)(A) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(g) *Housing*. (1) An entity shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this subsection (including housing provided only to married students).

(2) An entity may provide separate housing on the basis of sex.

(3) Housing provided by an entity to students of one sex, when compared to that provided to students of the other sex, shall be as a whole: (i) Proportionate in quantity to the number of students of that sex applying for such housing; and (ii) comparable in quality and cost to the student.

(4) An entity shall not on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(5) An entity which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take reasonable action to ensure that such housing is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. An entity may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(h) *Inter-institutional programs*. If a federally supported entity aids participation, by any applicant for or student enrolled in any of its training programs, in any program or activity of

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another organization or agency, such entity shall:

(1) Develop and implement a procedure to assure itself that such organization or agency takes no action with respect to such applicants or students which this part would prohibit such entity from taking; and

(2) Not aid such participation if such organization or agency takes such action.

(i) *Discrimination in employment prohibited.* A federally supported entity shall not discriminate on the basis of sex in employment practices relating to its professional and other staff who work directly with applicants for or students enrolled in any of its training programs. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, pregnancy leave, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 83.12 Recruitment.

(a) *Comparable recruitment.* A federally supported entity shall, with re-

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spect to each of its training programs, make comparable efforts to recruit members of each sex in the geographic area from which such entity attracts its students. A federally supported entity shall not recruit for any of its training programs exclusively or primarily at organizations or agencies which admit as members or students, or which provide a service for, only members of one sex unless such entity can demonstrate that such action is part of a recruitment program which does not have the effect of discriminating on the basis of sex in selection for a training program.

(b) *Recruitment practices.* A federally supported entity shall:

(1) Prominently include a statement of its policy of nondiscrimination on the basis of sex in each announcement, bulletin, catalogue, or application form which describes the training program of such entity or is used in connection with the recruitment of employees who will work directly with applicants for or students enrolled in a training program;

(2) Distribute without discrimination on the basis of sex any announcements, bulletins, catalogues, or other materials used in connection with the recruitment of students for a training program or employees who will work directly with applicants for such program or such students; and

(3) Apprise each of its recruitment representatives of its policy of nondiscrimination on the basis of sex, and require such representatives to adhere to such policy.

§ 83.13 State law and licensure requirements.

The obligation of an entity to comply with this part is not obviated or alleviated by any State or local law which would render an applicant for or student enrolled in a training program ineligible on the basis of sex for any license or certificate requisite to the practice of the health profession for which such applicant seeks, or student pursues, training.

§ 83.14 Development and dissemination of nondiscrimination policy.

(a) A federally supported entity shall develop a written policy statement of